IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2)(b))

Description of the Case.

Writ Petition no. 961(ss)2003

Honorary Capt. C.S. Sajwan .....Petitioner

Vs

Station Sub Area Canteen,
Extension Counter Vikas Nagar,
and three others. ....Respondents

Approved for reporting.

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~~Not approved for reporting.~~

Date of Decision 28, June, 2005.

Initial of Judge.

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HIGH COURT OF UTTARANCHAL AT NAINITAL.

Judgment Reserved

Writ Petition No. 961 (S/S) 2003

Honorary Capt. C.S. Sajwan (Retd.),
S/o late Sri Mahander Singh,
R/o village Rasulpur, Chakrata Road,
Dehradun. -- Petitioner

Vs

1. Station Sub Area,
   Canteen Extension Counter Vikas Nagar,
   Through its Chairman Uttaranchal Sub Area,
   Dehradun Cantt.
2. Manager, Station Sub Area Canteen,
   Dehradun, Cantt, District Dehradun,
3. Sub Area Commandant Sub Area,
   Dehradun Cantt., Head Quarter Dehradun,
4. Union of India,
   Through Ministry of Defence,
   New Delhi --- Respondents.

Sri Paresh Tripathi, Adv. & Sri M.C. Pant, learned counsel for the petitioner.
Learned Standing Counsel for Union of India.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Paresh Tripathi, Adv. & Sri M.C. Pant, learned counsel for the petitioner and learned Standing Counsel for Union of India.

By means of this writ petition, the petitioner has prayed to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 14.07.2003 issued by the respondents by which the petitioner has been dismissed. Further he prayed to issue a writ of mandamus directing the respondents to allow the petitioner to continue in service and pay him salary regularly.

Brief facts giving rise to the present writ petition are that the petitioner is an Ex-Army personal and after retirement he

was reappointed as Assistant Manager on August 1993 with the respondents. Vide order dated 26.06.2002, the services of the petitioner was shown as contractual service. on 26.05.2003 the respondents issued a show cause notice to the petitioner by assigning the charge ordering to Mrs. Savita Chauhan to make bill for 24 bottles of liquor on fictitious name on 19.02.2003 and another charge is that the allegations made against the petitioner by E.S. M's for which Court of Inquiry was ordered vide order no. 140489/complaint/01/(SC) dated 01.04.2003 and directed the petitioner to submit his explanation as to why necessary action should not be taken against the petitioner for termination of his services as per para 47 of Standard Operating Procedure (SOP) pertaining to Sub Area Canteen, Dehradun and the petitioner was asked to submit his reply. The show cause was issued to the petitioner without conducting any enquiry of without issuing any charge sheet to the petitioner, to which the petitioner has replied on 02.06.2003. On 05.06.2003, suspension order was issued against the petitioner which was challenged by the petitioner by filing writ petition no. 263 (S/S)2003 and this Court on 20.06.2003 has stayed the operation of the suspension order dated 05.06.2003. The petitioner joined his duties on 25.06.2003, as he was on medical leave w.e.f. 06.06.2003 to 24.06.2003. However, during the medical leave the respondents have taken charge of the post of Assistant Manager in his absence.

On 28.06.2003 the petitioner has submitted his reply through speed-post with the prayer that prior to issuance of show cause notice for suspension, two enquiries were conducted in which the statements of the petitioner were recorded but no opportunity of cross examination of the prosecution witnesses was given to him. When the petitioner has obtained stay order from this Court, it was for the first time

the charge sheet was given to the petitioner and Sri Ram Krishna was appointed as Enquiry Officer.

In his reply the petitioner has submitted that the petitioner wants to produce certain witnesses in his defence and wants to cross examine the prosecution witnesses. He has prayed to the authorities to revoke his suspension order, but the respondent has dismissed the petitioner. The respondents have neither held any enquiry nor the petitioner was informed of any date for holding of the enquiry. The whole process of enquiry was conducted in absence of the petitioner and the petitioner was not allowed to cross examine the witnesses. The petitioner was not served with the enquiry report and no show cause notice was issued to the petitioner.

It has been also pointed out by the petitioner that there was a practice in the Unit Run Canteens to obtain liquor on the basis of chit from card holders and most of the chits were being sent by the higher officers of Colonel levels and no subordinate officer can refuse the same. The petitioner has also mentioned this fact to the authorities that if any person who is holding the card demands for liquor under the quota of card, then the petitioner has no authority to deny the same. If a card is being kept by the family of ex-servicemen without giving information to the Manager of the Unit run canteen then the Manager is not in a position to ascertain this fact.

For dismissal of the petitioner, the respondents have relied upon the alleged admission of guilt by the petitioner in the enquiry proceedings, which was conducted prior to the issuance of the charge sheet, but it cannot be taken into account.

On the other hand the respondents have filed their counter affidavit in which they have denied the averments made in the writ petition and stated that a number of complaints were

received against the petitioner pertaining to the period 1999-2003, while he was performing his duties as Assistant Manager and the complaints were of serious in nature involving corruption and moral turpitudes. One of the allegations was of making fictitious bills for 24 bottles of rum. The petitioner drew these bottles for himself and misutilized these for his personal use. The petitioner also confessed the receipt of 24 bottles of rum charges off from the balances of the stores on fictitious names/bills, when he appeared before the enquiry and gave statement before the enquiry convened by the Management. Further, when the complaint of fictitious bills with forged signatures came to light, second Court of Enquiry was held on 10th April 2003 in which it was found that bills no. 25572, 25545, 17281, 17249, 19670, 17280 and 17278 pertaining to the period from Feb. 2002 to Jul. 2002 were fabricated and forged. The petitioner had participated and was present throughout the enquiry.

It has been further stated in the counter affidavit that petitioner was employed as an employee of Station (Sub Area) Canteen Dehradun on 28th August 1993 and later he was sent to Extension Counter, Vikas Nagar as Asstt. Manager. The initial employment was on contractual basis. The respondent's canteen is a Unit Run Canteen being operated by non-public funds. The contractual employees of all such employees under Defence Forces of India were brought under a set of rules, regulating the terms and conditions of services w.e.f. 2001 framed by Army Headquarters, Quarter Master General Branch, Deputy Directorate General Canteen Services and the same were amended/incorporated on 12th September 2003. therefore, a person who was appointed as employee of such canteen under these Rules, the status of the petitioner is Unit Run Canteen Employee, is wholly governed by the Rules framed

by the letter of Army HQs and the petitioner cannot be equated with any Govt. servant or public servant and, as such, is not entitled to take protection of any Act and Rules governing other Govt. servants. Procedure for dealing with cases of misconduct and the punishment to be awarded are stipulated in the Standard Operating Procedure (SOP). The act of misconduct and misappropriation on the part of the petitioner has been dealt with an accordance with the said Rules and the disciplinary proceedings have been disposed off by the Appointing/Disciplinary Authority. The petitioner is still open to approach the Appellate Authority. The petitioner has not made any appeal to the Appellate Authority and has moved the Hon'ble Court prematurely by concealing the true facts. The jurisdiction for dealing legal disputes is local courts of Dehradun. The petitioner has not exhausted the departmental remedies available to him, as the petitioner has given an undertaking to follow the said SOP, but has violated the same by his act of misconduct and is liable to be punished. The petitioner has contested in election of MLA as a candidate while in services of the canteen. The order or dismissal was passed assigning reasons.

The petitioner has been dismissed from his services on the ground of misconduct under the provisions of para-45 of SOP (Standard Operating Procedure). Para-47 of SOP is regarding procedure for dealing with the case of misconduct. Para-45 of SOP is reproduced as below:-

"Procedure for dealing with case of misconduct:

47. Before awarding to an employee any of the punishments mentioned in para-39(e) & 45 the following procedure shall be followed by the disciplinary authority :-

(a) The employee is to be served with a charge sheet, clearly stating the imputation of misconduct against him and calling upon him to show cause as to why one or more of the punishments, included in these guidelines should not be awarded to him.

(b) The reply to the charge sheet, if any, is to be duly considered by the disciplinary authority.

(c) If the employee so desires, he is to be heard in person and is also to be allowed to cross examine witness(es) against him or produce witnesses in his defence. The disciplinary procedure will be as under:-

(i) Before the employee is dismissed or discharge from service following procedure shall be adopted in accordance with the principal of natural justice as applicable from case to case:-

(aa) Issuance of Charge-Sheet,

(ab) Appointing of Inquiry Officer,

(ac) Holding of any Inquiry,

(ad) Perusal of the report of Inquiry Officer by the Disciplinary Authority.

(ae) Issuance of show cause notice,

(af) Issuance of order of punishment.

(ii) In the event of the services of a legally qualified person being utilized by the management/ establishment to present their case before the Inquiry Officer, the same opportunity must be offered/afforded to the delinquent employee. However, the employee can utilize the services of one of his colleagues to present his case before the Inquiry Officers.

(iii) After considering the inquiry report, if misconduct is established the disciplinary authority shall proceed to take appropriate action. However, the disciplinary authority is not bound to accept the inquiry report but while awarding the punishment, the authority must state its reasons for not accepting the inquiry report."

The aforesaid provision clearly states that the employee is to be served with the charge sheet stating therein imputations of misconduct against him. If employee, so desires, he is to be

heard in person and is also to be allowed to cross examine witness(es) against him or produce witnesses in his defence. Para-47 (c) (i) provides that before the employee is dismissed or discharged, he will be served with the charge sheet; Inquiry Officer will be appointed; there will be a full-fledged inquiry and after going through the report of Inquiry Officer, a show cause notice shall be issued. Only by adopting the procedure laid down in para-47 of the above Provision, the punishment order can be passed by the Disciplinary Authority. The order of dismissal dated 14th July 2003 itself indicates that a Court of Inquiry (Preliminary Inquiry) was conducted on 1st April 2003 and keeping in view the findings of inquiry report, the petitioner was given opportunity of personal hearing on 7th July 2003 by the Disciplinary Authority and the order of dismissal has been passed on 14th July 2003 in the light of the findings of that inquiry. Since the charge sheet was served upon the petitioner itself on 17th June 2003 levelling two charges against the petitioner therefore, the inquiry conducted on 1st April 2003 cannot be treated as full-fledged departmental inquiry, which was undoubtedly a preliminary inquiry. Thus, it cannot be disputed that a departmental inquiry was not conducted in the present case. It is the settled principal of law that an employee cannot be dismissed from services without holding departmental inquiry. The argument advance by learned Standing Counsel that the petitioner was dismissed from service after holding proper inquiry and after affording him adequate opportunity of hearing as well, is not, at all, sustainable.

Learned Standing Counsel has further submitted that the order of dismissal was passed assigning the reasons. I do not find substance in the submission made by the learned Standing Counsel. Whichever reasons have been recorded by the Disciplinary Authority, as stated in the impugned order, the

same are based on the inquiry conducted on 1st April 2003 which was, in fact, a preliminary inquiry as the charge sheet, as already stated above, was served on the petitioner on 17th June 2003. As such, the reasons recorded for dismissal of an employee on the basis of preliminary inquiry cannot be said to be proper and justified hence, the order impugned is bad in the eye of law.

Learned Standing Counsel has argued that the petitioner, while in service, has contested the election of Member of Legislative Assembly as a candidate. But it was not a charge levelled against the petitioner in the charge sheet and the impugned order is not based on this ground. In regard to the allegation that the petitioner has contested the election of Member of Legislative Assembly, as a candidate, was not included in the charge sheet and it was not a subject matter even in the preliminary inquiry, rather the petitioner did not get any opportunity to defend himself on this allegation. In any case, while passing the impugned order, this allegation was not considered by the Disciplinary Authority wile punishing the petitioner dismissing him from services.

Learned Standing Counsel has further contended that the petitioner could have approached the Appellate Authority against the impugned order. He did not prefer appeal and rushed to the High Court. Since, the petitioner has not exhausted the departmental remedy available to him, hence the writ petition is not maintainable. The respondents failed to establish their stand to the outcome that a proper departmental inquiry was conducted before passing the impugned order, dismissing the petitioner from services. Since the petitioner has been dismissed without holding departmental inquiry, the order is absolutely without jurisdiction and consequently, there is no

bar in entertaining the writ petition against an arbitrary order which has been passed wholly without jurisdiction.

For the reasons recorded above, the writ petition is allowed. The impugned order dated 14.07.2003 issued by the respondents is hereby quashed. No order as to costs.

(M.M. Ghildiyal, J.)

June 28, 2005:
NCM: